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Express Steel Structures, Inc. and Iron Workers Local Union NO. 10, affiliated with International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 17-CA-19146

March 19, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS HURTGEN
AND BRAME

Upon a charge and amended charge filed by the Union on April 18 and July 10, 1997, the General Counsel of the National Labor Relations Board issued a complaint on July 16, 1997, against Express Steel Structures, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On January 30, 1998, the General Counsel filed a Motion for Summary Judgment with the Board. On February 9, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 13, 1998, notified the Respondent that unless an answer were received by January 20, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Kansas City, Kansas, has been engaged in the construction industry as a contractor engaged in the erection of metal buildings. The Respondent, in conducting its business operations, annually purchases and receives at its Kansas City, Kansas facility or at its jobsites located in the State of Kansas, goods valued in excess of \$50,000 directly from points outside the State of Kansas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About March 25, 1997, the Respondent ordered an employee not to participate in protected concerted activity or union activity, and impliedly threatened employees with termination if they chose to engaged in protected concerted activity or union activity.

About March 26, 1997, the Respondent ordered employees not to engaged in union activity.

About March 27, 1997, the Respondent threatened employees with physical reprisals, including shooting employees, if employees engaged in union activity.

Since about March 25, 1997, the Respondent refused to grant a promised wage increase to its employee Bruce Wilson. Beginning about March 28, 1997, and continuing thereafter, the Respondent refused to give instructions or job assignments to its employee Bruce Wilson. By this conduct, the Respondent caused the termination of its employee Bruce Wilson. The Respondent engaged in this conduct because the named employee joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By refusing to grant a promised wage increase to Bruce Wilson, refusing to give him instructions or job assignments, and thereby causing his termination, the Respondent has also been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, and has thereby engaged in unfair labor practices affecting commerce within the

meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to grant Bruce Wilson a promised wage increase since about March 25, 1997, and refusing, beginning about March 28, 1997, to give him instructions or job assignments, thereby terminating him, we shall order the Respondent to grant the promised wage increase to Wilson, retroactively to March 25, 1997, offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify Bruce Wilson in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Express Steel Structures, Inc., Kansas City, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Ordering employees not to participate in protected concerted activity or union activity, impliedly threatening employees with termination if they choose to engage in protected concerted activity or union activity, or threatening employees with physical reprisals, including shooting employees, if they engage in union activity.

(b) Refusing to grant promised wage increases to its employees or refusing to give instructions or job assignments to them, thereby causing their termination, all because employees join or assist the Iron Workers Local Union No. 10, affiliated with the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Grant the promised wage increase to Bruce Wilson, retroactively to March 25, 1997.

(b) Within 14 days from the date of this order, offer Bruce Wilson immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Make Bruce Wilson whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this order, expunge from its files any and all references to the unlawful discharge of Bruce Wilson, and, within 3 days thereafter, notify him in writing that this has been done.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this order.

(f) Within 14 days after service by the Region, post at its facility in Kansas City, Kansas, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 25, 1997.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 19, 1998

William B. Gould IV,	Chairman
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Peter J. Hurtgen,	Member
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J. Robert Brame III,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT order employees not to participate in protected concerted activity or union activity, impliedly threaten employees with termination if they choose to engaged in protected concerted activity or union activity, or threaten employees with physical reprisals, in-

cluding shooting employees, if they engage in union activity.

WE WILL NOT refuse to grant promised wage increases to our employees or refuse to give instructions or job assignments to them, thereby causing their termination, all because employees join or assist the Iron Workers Local Union No. 10, affiliated with the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL grant Bruce Wilson the promised wage increase, retroactive to March 25, 1997.

WE WILL, within 14 days from the date of this order, offer Bruce Wilson immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Bruce Wilson whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL, within 14 days from the date of this order, expunge from our files any and all references to the unlawful discharge of Bruce Wilson, and, within 3 days thereafter, notify him in writing that this has been done.

EXPRESS STEEL STRUCTURES, INC.